

Distribution & LTL Carriers Association

Alexandria, Virginia 22314-4677

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August 26, 2002

Ellen G. Engleman

Administrator

Research and Special Programs Administration

Room 8410

Joseph M. Clapp

Administrator

Federal Motor Carrier Safety Administration

Room 8202

SUBJECT:Docket No. FMCSA-02-11650 (HM-232 A):

Security Requirements for Motor Carriers Transporting Hazardous
Materials

Dear Administrators Engleman and Clapp:

Pursuant to 49 C.F.R §106.25, we are requesting that alternative
rulemaking procedures be used in this joint RSPA and FMCSA regulatory
proceeding. Your prompt consideration of this petition is appreciated.

Sincerely,

Kevin M. Williams

cc: Docket Management System
U.S. Department of Transportation
400 Seventh Street, SW
Room PL 401
Washington, DC 20590

BEFORE THE

DEPARTMENT OF TRANSPORTATION

RESEARCH & SPECIAL PROGRAMS ADMINISTRATION

and

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

DOCKET NO. FMCSA-02-11650 (HM-232A)

SECURITY REQUIREMENTS FOR MOTOR CARRIERS
TRANSPORTING HAZARDOUS MATERIALS

PETITION FOR ALTERNATIVE

RULEMAKING PROCEEDINGS PURSUANT

TO 49 C.F.R. §106.25

SUBMITTED BY: Distribution & LTL Carriers Association
Kevin M. Williams
Chief Executive Officer
2200 Mill Road, Suite 600
Alexandria, Virginia 22314-4677
(703) 838-1806

DATED: August 26, 2002

The Distribution & LTL Carriers Association, which represents regional trucking companies engaged in the for-hire transportation of less-than-truckload freight, including hazardous materials that requires placarding, respectfully petitions RSPA and FMCSA to substitute alternative procedures to evaluate the need, feasibility, benefits and costs of deploying additional security measures for motor carriers transporting hazmat shipments. RSPA and FMCSA have jointly asked for comments by October 15th in this advanced notice of proposed rulemaking on any additional security measures involving armed escorts, vehicle tracking and monitoring systems, other anti-theft devices for vehicles, short range communication systems and notification procedures to state and local authorities.. We request that these agencies, pursuant to 49 C.F.R. §106.25, convene either an informal or formal advisory committee, or even engage in "listening sessions" which have been successfully used in the past to address safety and other important regulatory issues. We believe a face-to-face dialogue on the security measures raised in this regulatory notice will better assure informed administrative action and protect the public interest.

The diversity of the hazmat industry, the complexity of these security issues and, in fact, the sensitive nature of some of existing security procedures, which is noted by RSPA and FMCSA, make the proposed regulatory process cumbersome. It will likely be ineffective to reaching a well informed judgement on whether and how to proceed. The normal notice and comment process is static, with restricted opportunity to develop the issues and options and fill in the details which often determine what is the best course of action. General or open-end questions often invite similar responses. Moreover, there are relevant security measures not raised in this notice.

A face-to-face approach is superior for exchanging ideas, information and formulating differing approaches based on discussions. Private industry is willing to share with RSPA and FMCSA its knowledge about existing and potential security measures. Equally important, we would like these agencies to share with us your educational and security training tools. For example, in Docket No. 232, RSPA indicated it was developing a series of cost-effective modules for training companies on hazmat security. Also, you have anti-terrorist training programs for law enforcement personnel which may well have significant value for private industry education. Industry needs to know more about the benefits of these regulatory initiatives.

As with transportation safety, vehicle and cargo security starts with people. It involves security checks on drivers and employee applicants for criminal and/or terrorist records. FMCSA is now developing rules to implement Section 1012 of the Patriot Act which will result in governmental background checks before a state may issue or renew a CDL with a hazmat endorsement. The potential benefits of the program remain to be seen. Our industry, however, would like to discuss ways to broaden our access to the national criminal databases to enhance security. This is a relevant issue for this proceeding.

The RSPA proposal in Docket No. 232 also builds upon the human element of security through screening of personnel and by requiring written security plans and training of hazmat employees on proper security procedures at facilities and while in transit. Once again, the security benefits of that proposal cannot be measured until it becomes effective and is routinely implemented.

The trucking industry believes its Highway Watch Program, which has its roots in promoting safety, has application to security threats. It is now being expanded with state cooperation. Its role and applications for hazmat security should be discussed in the context of this proceeding.

The future role of FMCSA engaging in site security visits to educate employers and check procedures should also be discussed. Was the prior undertaking by FMCSA beneficial and, if so, how can it be used in the future?

A number of states have cargo tip programs where companies and law enforcement personnel share information to prevent and interdict stolen vehicles. Their effectiveness is proven; their future however is being challenged as funding diminishes. The ways to bolster these cooperative programs should be addressed also.

The role of armed escorts, with its limited application today in the transportation principally of munitions and ultra hazardous materials, is too costly to undertake for broader hazmat transportation services. It is also unnecessary.

Technology has an application to security. There are promising, cost-effective anti-ignition devices being used in our industry. High cost and high technology GPS vehicle tracking - used principally in long haul trucking to enhance fleet management operations - have vulnerabilities with recent reports on how organized crime groups are able to circumvent it. The American Trucking Associations (ATA) this past May held a seminar on security measures. The informative topics on technologies and security measures and knowledgeable speakers are contained in the attached brochure and could be discussed at these meetings.

FMCSA and RSPA need to take a deliberative, incremental approach to this area. We sincerely believe that an alternative face-to-face format is superior to this ANPR process. Cooperative industry and governmental initiatives are preferred to additional regulatory mandates.

For these reasons, we request that RSPA and FMCSA hold this ANPR process in abeyance and establish either advisory groups, listening sessions or another hearing format to discuss what additional security measures may be cost-effective for hazmat transportation.

Respectfully submitted,

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